

STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD

In the Matter of Applications 24330
and 24337 to 24343)

NORMAN C. PEASE)

Applicant)

LAUNCE E. AND GEORGE F. GAMBLE,
ET AL.)

Protestants)

Decision: 1546

Sources : Unnamed Streams and
Adams Creek

County : Napa

DECISION APPROVING PETITIONS TO CHANGE
THE POINTS OF DIVERSION AND PLACES OF USE
UNDER APPLICATIONS 24340 AND 24342
AND APPROVING APPLICATIONS 24330 AND 24337 TO 24343

BY THE BOARD:

Norman C. Pease (applicant) having filed Applications 24330, 24337, 24338, 24339, 24340, 24341, 24342 and 24343 for permits to appropriate unappropriated water; protests having been received; the applicant and protestants Gamble having stipulated to proceedings in lieu of hearing as provided by Title 23, California Administrative Code, Section 737; an investigation having been made by the Board pursuant to said stipulations, petitions to change the point of diversion and place of use having been received; a protest having been received; a public hearing having been held before Board Member Adams on February 25, 1976; the applicant and protestants having been notified of said hearing; the evidence received into the record having been considered; the Board finds as follows:

Substance of the Applications and the Petitions

1. The details of Application 24330 and 24337 to 24343 are listed in Appendix A. In summary, the proposed diversions are from an unnamed stream tributary to Adams Creek, and from Adams Creek, tributary to Eticuera Creek, thence Lake Berryessa. They are all for storage during the season from November 1 to June 15. Application 24330 and 24342 propose diversion of water from the Adams Creek watershed to the Mysterious Creek watershed for storage in two existing reservoirs under permitted Application 23532 (see attached schematic).

2. On June 12, 1974, the applicant filed petitions to change the place of use and point of diversion under Applications 24340 and 24342. The petitions to change the point of diversion under each application propose to move the point of diversion upstream to allow a gravity conveyance of water from the Adams Creek watershed to the Mysterious Creek watershed. The petitions to change the place of use reduced the area of the proposed place of use under each application. They were filed to conform the applications to the applicant's proposed operation.

3. The proposed season of diversion to storage under each application is November 1 to June 15. The total amount to be appropriated under all of the applications will not exceed 272 acre-feet per annum (afa).

Applicant's Project

4. The applicant owns property in the headwaters of the Mysterious Creek watershed and of the Adams Creek watershed. He proposes to irrigate a total acreage of 85 acres of permanent pasture and to provide stockwatering for 50-100 range cattle. The applicant also proposes to use the water for fish culture, fire protection, recreation and waterfowl propagation.

5. The applicant already holds permitted Application 23532, which authorizes the collection to storage of 800 afa from October 1 to June 15 from the natural flow in Mysterious Creek and unnamed streams tributary to Mysterious Creek and the direct diversion of three cubic feet per second (cfs) from May 15 to October 1. The total amount authorized under permitted Application 23532 is not to exceed 1,400 afa. The purposes of use are the same under permitted Application 23532 as under the present applications. The place of use consists of 200 acres in the Mysterious Creek watershed. The places of use under Applications 24340 and 24342 as amended apparently overlap the place of use under permitted Application 23532 to the extent of 23 acres, being eight acres within the NW $\frac{1}{4}$ of NW $\frac{1}{4}$ of Section 1, T10N, R5W, and 15 acres within the SE $\frac{1}{4}$ of SW $\frac{1}{4}$ of Section 36, T11N, R5W. This overlap exists because the source of water for permitted Application 23532 is insufficient to adequately irrigate said lands.

Protests

6. The California Department of Fish and Game and Launce E. and George F. Gamble (Protestants Gambly) filed protests against the approval of all the applications. Harold Shein (Protestant Shein) filed a protest against Application 24340 and 24342, as amended by petition. The California Department of Fish and Game withdrew its protest when it determined through subsequent investigations that the proposed appropriations would not adversely affect fish and wildlife. Protestants Gamble and Protestant Shein are the only known users of water from Adams Creek and from Eticuera Creek downstream of the confluence of Adams Creek and Eticuera Creek.

7. Protestant Shein owns land through which Adams Creek flows. At the time of filing his protest, Protestant Shein used about 65 afa from Adams Creek downstream from the applicant under claim of riparian right for irrigation of 30 acres, incidental domestic use, stockwatering of 50 head of cattle and recreational purposes (Statement of Water Diversion and Use S8498). Protestant Shein filed a supplemental Statement of Water Diversion and Use on December 16, 1977. This water statement indicates that Protestant Shein's water use has been reduced to about two afa. Protestant Shein alleges that the proposed appropriations for diversion outside the Adams Creek watershed will infringe on his existing uses. Protestant Shein did not appear at the hearing.

8. Protestants Gamble own a ranch located downstream from the applicant's property. They use waterholes in Adams and Eticuera Creek during the summer and fall months to provide water for 650 head of stock. Protestants' operation is one of controlled grazing and includes moving the cattle from one water source to another (Statement of Water Diversion and Use S2098). In a letter dated June 19, 1973, protestants indicated that the unnamed stream tributary to Adams Creek does not run year-round. Since protestants rely on Adams Creek for stockwatering holes during the summer and fall months, they feel it is essential that the applicant not divert water after March 1 or before January 1 in order to ensure water at the watering holes during those months. Thus, protestants' protest concerns the suitability of the applicant's proposed season of diversion.

Availability of Unappropriated Water

9. The headwaters of Adams Creek are on the applicant's property at an elevation of 1,720 feet. Adams Creek flows in a generally south-easterly

direction about 6 3/4 miles to its confluence with Eticuera Creek. Eticuera Creek discharges into Lake Berryessa about 1/4 mile below the confluence of Eticuera Creek and Adams Creek.

10. The United States Geological Survey (USGS) established a stream gage on Adams Creek in 1969. It is located within the upper limits of Protestants Gamble's property and below Protestant Shein's property. The drainage area above the stream gage is 4,750 acres. The drainage area of the applicant's property is located at the extreme upper reaches of the Adams Creek watershed and contains about 480 acres. Thus, the applicant's drainage area is approximately 10 percent of the drainage area above the Adams Creek stream gage.

11. Protestant Shein protested Applications 24340 and 24342, as amended. Application 24340 is a proposal for the diversion of 25 acre-feet to off-stream storage from November 1 to June 15 of each season for irrigation within the Mysterious Valley watershed. Application 24342 is a proposal for the diversion of 44 acre-feet to off-stream storage from November 1 to June 15 of each season for irrigation within Mysterious Valley watershed. It is alleged that the applicant's use of this water outside the Adams Creek watershed would deprive protestant of the use of existing runoff water and is the basis for his protest. However, the USGS gage on Adams Creek is below protestant's point of diversion and the quantities measured there reflect surplus water over and above Mr. Shein's requirements.

12. Protestants Gamble allege that the applicant's appropriations would deprive them of sufficient stockwater downstream during the summer and fall months. However, the applicant's property within the Adams Creek watershed amounts to only 10 percent of the drainage area above protestants' property and

thus affects only about 10 percent of the streamflow. In addition, Adams Creek is not the protestants' sole source of stockwater since they also use water from Nevada Creek, Eticuera Creek and surrounding wells. Finally, data from the streamflow records of Adams Creek indicates sufficient winter storm runoff is available from December 1 to May 31 to meet the applicant's needs in addition to the needs of both protestants. Thus, unappropriated water is available to supply the applicant from December 1 to May 31 as against users from Adams Creek and from Eticuera Creek downstream of its confluence with Adams Creek. By limiting the applicant's season of diversion to the period from December 1 through May 31, none of the protestants will be adversely affected by the applicant's proposed appropriations. Terms will be included in any permit issued requiring outlet pipes in the dams and disallowing any collection outside the proposed season.

13. Decision 869 approved on February 7, 1957, authorized the issuance of permits on Applications 11199, 12578, and 12716 to the United States Bureau of Reclamation (Bureau) for the appropriation of essentially all unappropriated water in the Putah Creek watershed at Monticello Reservoir and Putah Diversion Dams. Decision 869 contained a provision, Condition 14, that the permits issued to the Bureau were subject to depletion of stream flow above Monticello Reservoir, not to exceed 33,000 afa, by future appropriations of water for use within the Putah Creek watershed above Monticello Reservoir, if such appropriations are initiated and consumated prior to full use under the Bureau's permits. Here the applicant's proposed place of use is completely within the Putah Creek watershed above Monticello Reservoir. Since the depletion allowance of 33,000 acre-feet

has not been fully utilized and since the Bureau has not achieved full use of water under its permits, the applicant is within that class of persons who may receive the benefit of Condition 14. Accordingly, the Board concludes that there is unappropriated water available to supply the applicant as against users from Putah Creek.

14. The intended use is beneficial.

Effect of the Proposed Changes

15. In effect, the petition to change the place of use and points of diversion under Applications 24340 and 24342 would amend the respective applications to reflect the actual project. Since the petitions propose to move the points of diversion upstream and to reduce the authorized place of use, the proposed changes do not constitute the initiation of a new right and they will not operate to the injury of any legal user of the water involved.

Environmental Considerations

16. The Board has prepared a Negative Declaration in accordance with the California Environmental Quality Act (Public Resources Code, Section 21000, et seq.) and the state guidelines. The Board determines that there will be no significant effect on the environment as a result of the applicant's projects.

Conclusions

17. From the foregoing findings, the Board concludes that Applications 24330, and 24337 to 24343 should be approved as amended by petitions to change the points of diversion and places of use under Applications 24340 and 24342 as set forth in the order following.

ORDER

IT IS HEREBY ORDERED that the points of diversion and places of use under Applications 24340 and 24342 be amended as set forth in the petitions referred to herein.

IT IS FURTHER ORDERED that Applications 24330 and 24337 to 24343 be approved and that permits be issued to the applicant subject to vested rights. The permits shall contain all applicable standard permit terms (5i, 6, 7, 10, 11, 12, and 13)* in addition to the following conditions:

1. The water appropriated under Application 24330 shall be limited to the quantity which can be beneficially used and shall not exceed a total of 25 acre-feet per annum to be collected from December 1 of each year to May 31 of the succeeding year as follows: (1) 10 acre-feet per annum in Reservoir No. 1, and (2) 15 acre-feet per annum in Reservoir No. 2.

2. The water appropriated under Application 24337 shall be limited to the quantity which can be beneficially used and shall not exceed a total of 25 acre-feet per annum to be collected from December 1 of each year to May 31 of the succeeding year as follows: (1) 15 acre-feet per annum in Reservoir No. 3, and (2) 10 acre-feet per annum in Reservoir No. 4.

* The Board maintains a list of standard permit terms.
Copies may be obtained upon request.

3. The water appropriated under Application 24338 shall be limited to the quantity which can be beneficially used and shall not exceed a total of 25 acre-feet per annum to be collected from December 1 of each year to May 31 of the succeeding year as follows: (1) 10 acre-feet per annum in Reservoir No. 5, and (2) 15 acre-feet per annum in Reservoir No. 6.

4. The water appropriated under Application 24339 shall be limited to the quantity which can be beneficially used and shall not exceed a total of 25 acre-feet per annum to be collected from December 1 of each year to May 31 of the succeeding year as follows: (1) 15 acre-feet per annum in Reservoir No. 7, and (2) 10 acre-feet per annum in Reservoir No. 8.

5. The water appropriated under Application 24340 shall be limited to the quantity which can be beneficially used and shall not exceed 25 acre-feet per annum in Reservoir 2P (Reservoir 2 under Permitted Application 23532) to be collected from December 1 of each year to May 31 of the succeeding year.

6. The water appropriated under Application 24341 shall be limited to the quantity which can be beneficially used and shall not exceed 49 acre-feet per annum in Reservoir No. 11, to be collected from December 1 of each year to May 31 of the succeeding year.

7. The water appropriated under Application 24342 shall be limited to the quantity which can be beneficially used and shall not exceed a total of 49 acre-feet per annum to be collected from December 1 of each year to May 31 of the succeeding years as follows: (1) 44

acre feet per annum in Reservoir 3P (Reservoir 3 under Permitted Application 23532), and (2) five acre-feet per annum in Reservoir No. 12.

8. The water appropriated under Application 24343 shall be limited to the quantity which can be beneficially used and shall not exceed 49 acre-feet per annum in Reservoir No. 13, to be collected from December 1 of each year to May 31 of the succeeding year.

9. The maximum rate of diversion to offstream storage under Application 24340 shall not exceed 15 cubic feet per second.

10. The maximum rate of diversion to offstream storage under Application 24342 shall not exceed 15 cubic feet per second.

All permits shall be subject to the following terms:

11. Said construction work shall be completed on or before December 1, 1982.

12. Complete application of the water to the proposed use shall be made on or before December 1, 1983.

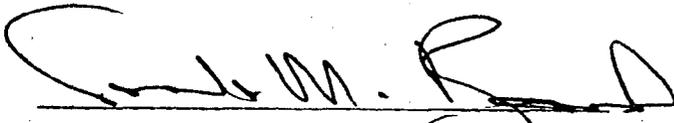
13. Permittee shall install and maintain outlet pipes of adequate capacity in his dams as near as practicable to the bottom of the natural stream channel, or provide other means satisfactory to the State Water Resources Control Board, in order that water entering the reservoir which is not authorized for appropriation under this permit may be released.

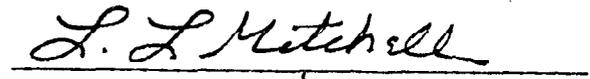
14. Permittee is hereby put on notice that there may be years when water collected to storage under this permit will not be within the reservation of water established for the watershed upstream from Monticello Reservoir in Decision D 869. During such years, unless replacement water

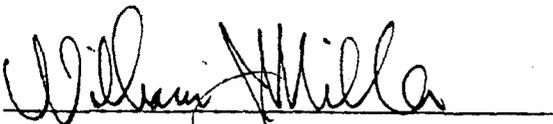
is provided on an exchange basis, permittee shall release water collected to storage under this permit during the preceding collection season at the maximum practical rate to flow into Monticello Reservoir.

15. In order to prevent degradation of the quality of water during and after construction of the project, prior to commencement of construction permittee shall file a report pursuant to Water Code Section 13260 and shall comply with any waste discharge requirements imposed by the California Regional Water Quality Control Board, Central Valley Region, or by the State Water Resources Control Board.

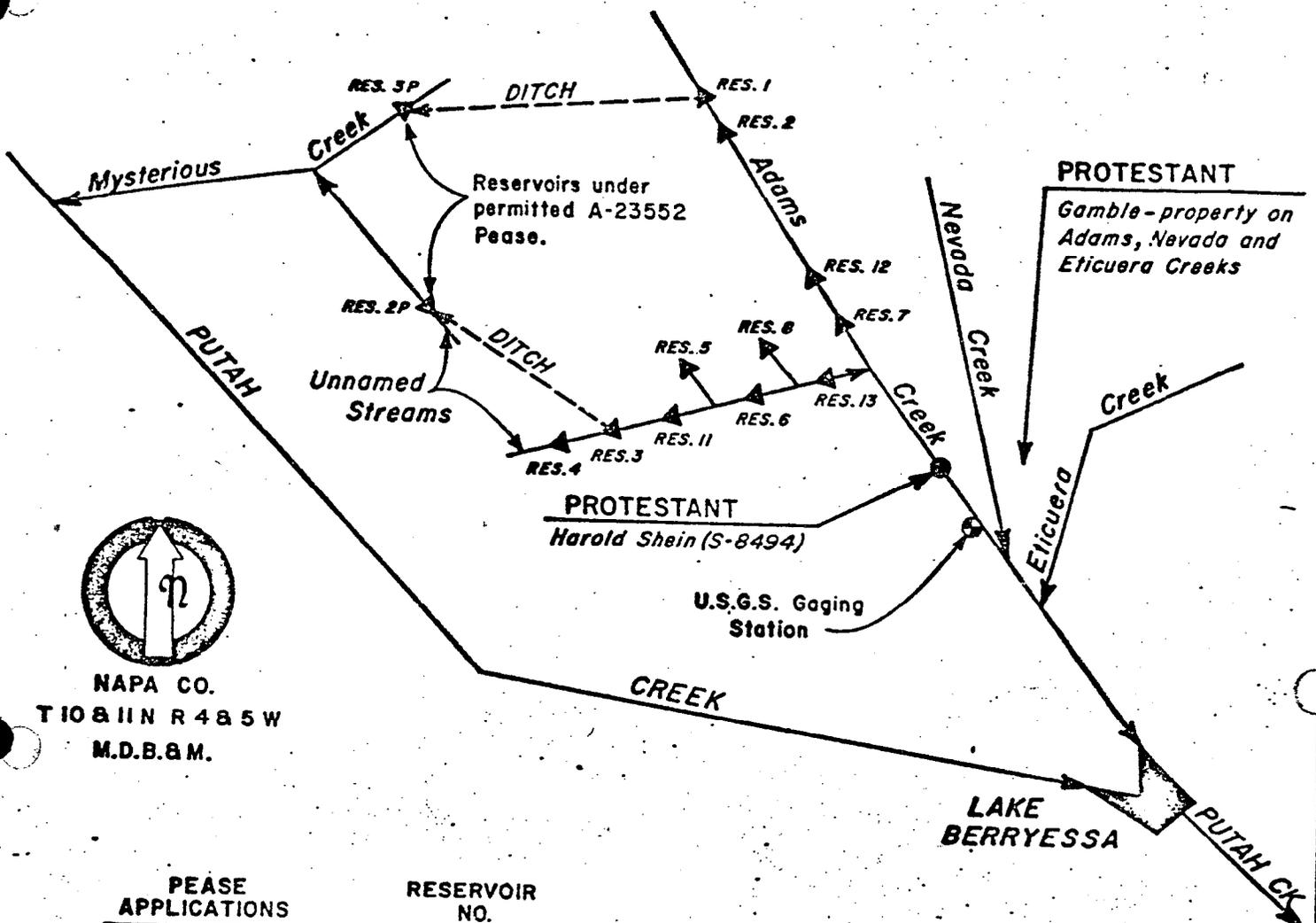
Dated: OCT 18 1979


Carla M. Bard, Chairwoman


L. L. Mitchell, Member


William J. Miller, Vice Chairman


W. Don Maughan, Member



NAPA CO.
T 10 & 11 N R 4 & 5 W
M.D.B.&M.

PEASE APPLICATIONS	RESERVOIR NO.
A-23552 (PERMITTED)	2P, 3P
A-24330	1, 2
A-24337	3, 4
A-24338	5, 6
A-24339	7, 8
A-24340	3, 2P
A-24341	11
A-24342	1, 3P, 12
A-24343	13

STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD

APPLICATION
23552, 24330, 24337 to 24343

SCHEMATIC DIAGRAM

DATE: 9-17-79	DRAWN: D.L.O.	CHECKED: A.W.	DWG. 3207
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APPENDIX A

Substance of the Applications

The purposes of use under all eight applications are irrigation, stock-watering, recreational, fish culture, fire protection and waterfowl propagation.

Additional details of each application, which follow, include changes in Applications 24340 and 24342 requested by petitions for which notice was issued on January 9, 1975.

Application 24330

Date filed: March 20, 1973

Source: An unnamed stream

Tributary to: Adams Creek thence Eticuera Creek

Quantity: A total of 25 acre-feet per annum (afa) in reservoirs of 10 acre-feet (af) and 15 af capacity

Season: November 1 to June 15

Points of Diversion: Two dams within NE $\frac{1}{4}$ of NE $\frac{1}{4}$, Section 1, T10N, R5W, MDB&M* (Reservoirs 1 and 2)

Place of Use: Eight acres within Section 1, T10N, R5W, MDB&M

Application 24337

Date filed: April 4, 1973

Source: An unnamed stream

Tributary to: Adams Creek thence Eticuera Creek

Quantity: A total of 25 afa, in reservoirs of (1) 15 af and (2) 10 af capacity

*All references to township and range are from Mount Diablo Base and Meridian (MDB&M).

Application 24337 (cont'd)

Season: November 1 to June 15

Points of diversion: two dams: (1) within SW $\frac{1}{4}$ of SE $\frac{1}{4}$, Section 1, T10N, R5W (Reservoir 3), and (2) within NW $\frac{1}{4}$ of NE $\frac{1}{4}$, Section 12, T10N, R5W (Reservoir 4)

Place of use: six acres within Section 1 and two acres within Section 12, T10N, R5W

Application 24338

Date filed: April 4, 1973

Source: An unnamed stream

Tributary to: Adams Creek thence Eticuera Creek

Quantity: a total of 25 afa in reservoirs of (1) 10 af and (2) 15 af capacity

Season: November 1 to June 15

Points of diversion: two dams (1) within SW $\frac{1}{4}$ of NE $\frac{1}{4}$, Section 1, T10N, R5W (Reservoir 5), and (2) within NE $\frac{1}{4}$ of SE $\frac{1}{4}$, Section 1, T10N, R5W (Reservoir 6)

Place of use: eight acres within Section 1, T10N, R5W

Application 24339

Date filed: April 4, 1973

Source: An unnamed stream

Tributary to: Adams Creek thence Eticuera Creek

Quantity: a total of 25 afa in reservoirs of 15 af and 10 af capacity

Application 24339 (cont'd)

Season: November 1 to June 15

Points of diversion: two dams within SE $\frac{1}{4}$ of NE $\frac{1}{4}$, Section 1, T10N,
R5W (Reservoirs 7 and 8)

Place of use: eight acres within Section 1, T10N, R5W

Application 24340

Date filed: April 4, 1973

Source: Adams Creek

Tributary to: Eticuera Creek thence Lake Berryessa

Quantity: 25 afa

Season: November 1 to June 15

Point of diversion: to offstream storage, SW $\frac{1}{4}$ of SE $\frac{1}{4}$, Section 1, T10N,
R5W (Reservoir 3, Application 24337), (Point (1) under Application
24337)

Point of redirection: at Reservoir #2 of Permit 16355 (Application
23532) within SE $\frac{1}{4}$ of NW $\frac{1}{4}$, Section 1, T10N, R5W (designated herein
as Reservoir 2P)

Place of use: eight acres within NW $\frac{1}{4}$ of NW $\frac{1}{4}$, Section 1, T10N, R5W

Application 24341

Date filed: April 4, 1973

Source: Adams Creek

Tributary to: Eticuera Creek thence Lake Berryessa

Quantity: 40 afa

Application 24341 (cont'd)

Season: November 1 to June 15

Point of diversion: within NE $\frac{1}{4}$ of SW $\frac{1}{4}$, Section 1, T10N, R5W
(Reservoir 11)

Place of use: 15 acres within Section 1, T10N, R5W

Application 24342

Date filed: April 4, 1973

Source: an unnamed stream

Tributary to: Adams Creek thence Eticuera Creek

Quantity: a total of 49 afa consisting of (1) diversion of 44 afa
to offstream storage and (2) five afa onstream storage

Season: November 1 to June 15

Points of diversion: (1) to offstream storage, NE $\frac{1}{4}$ of NE $\frac{1}{4}$, Section 1,
T10N, R5W (Reservoir 1, Application 24330), (Point (1) under
Application 24330) and (2) within SE $\frac{1}{4}$ of NE $\frac{1}{4}$ of Section 1, T10N,
R5W (Reservoir 12)

Point of rediversion: as Reservoir #3 of Permit 16355 within SE $\frac{1}{4}$ of
SW $\frac{1}{4}$, Section 36, T11N, R5W (herein designated Reservoir 3P)

Place of use: 15 acres within SE $\frac{1}{4}$ of SW $\frac{1}{4}$, Section 36, T11N, R5W

Application 24343

Date filed: April 4, 1973

Source: Adams Creek

Tributary to: Eticuera Creek thence Lake Berryessa

Quantity: 40 afa

Season: November 1 to June 15

Point of diversion: within NE $\frac{1}{4}$ of SE $\frac{1}{4}$, Section 1, T10M, R5W
(Reservoir 13)

Place of use: 15 acres within Section 1, T10N, R5W